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SUBJECT: OY CANADA - COLOMBIA CLOSES FTA WITH CANADA

REF: A. OTTAWA 778

¶B. BOGOTA 1926

¶1. (U) SUMMARY: Colombia closed free trade negotiations with Canada on Saturday, June 7. Implementation before the U.S.-Colombia Trade Promotion Agreement (CTPA) could place some U.S. producers at a competitive disadvantage, most notably agricultural products, certain manufactured products, service providers and investors. Modeled on the U.S. accord, the Agreement nonetheless contains important differences, such as the exclusion of poultry and dairy, no intellectual property chapter and the absence of trade sanctions as an option in resolving labor and environment disputes. The GOC expects to bring the Agreement into force in early 2009. END SUMMARY.

Onward and Outward

¶2. (U) By closing its trade negotiations with Canada, the Uribe Administration further advanced its policy of expanding Colombia's access to global markets. The trade agreement with Canada is the second to have closed in 2008; the GOC finished negotiations earlier this year with three Central American countries, El Salvador, Guatemala and Honduras. Colombia, which also negotiated a pact with Chile in 2007, plans to close shortly with the EFTA countries (Norway, Switzerland, Iceland and Liechtenstein) and hopes to jump start negotiations with the European Union (EU). As those negotiations conclude, the Colombians are looking westward for potential trade and investment partners (ref B).

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The Same But Different - Canada is Not the U.S.
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¶3. (SBU) Canadian and Colombian trade officials agreed at the inception of negotiations to model their agreement on the recently concluded U.S.-Colombia Trade Promotion Agreement (CTPA), which meant the negotiations began with nearly 80 percent of the Agreement in place. However, according to one negotiator, using the CTPA model became an albatross for the GOC, because the Canadians expected the same level of access the Colombians had granted to the U.S. The Colombians, however, were unwilling to provide equivalent access to a much smaller economy. (NOTE: The Central Americans treated the Colombians similarly in their negotiations, where Colombia asked for and was refused terms that the U.S. received in the U.S-Central American Free Trade Agreement (CAFTA). END NOTE)

¶4. (SBU) Poultry, eggs and dairy - contentious issues before

and after the CTPA negotiations - were left out of the Canada agreement. Labor and environment chapters made it into the Agreement, but the obligations were relegated to "parallel agreements," since not all Canadian provinces can sign on to the obligations. The parallel agreements, however, are essentially the same as the obligations in CTPA, with two major exceptions: 1.) labor and environment disputes can result in fines but not in trade sanctions, as stipulated in the CTPA; and 2.) disputes will follow the process described in the side agreements, not through the trade agreement's dispute settlement chapter, as is the case in the CTPA. The Colombians, however, were able to gain something in the Canada agreement that is not contained in the CTPA, recognition of equivalent rights for Colombian immigrants in Canada. Trade Vice Minister Munoz told EconCouns that the parties took a more collaborative, and less combatant, approach on these issues than in CTPA negotiations.

¶5. (SBU) Negotiators dropped the intellectual property chapter. According to a Colombian negotiator, the Canadians refused to include biodiversity obligations in the chapter - a major sticking point in the CTPA negotiations - so the Colombians rejected the entire chapter. In practice, this does not amount to much of a sacrifice for the Canadians as intellectual property regimes cannot discriminate by country of origin. Therefore, Canadians and all nationalities will eventually enjoy the same protections granted in the most advanced agreement, which, when approved, will be the CTPA.

¶6. (U) In the investment chapter, negotiators put the investor-state provisions on stability contracts in an annex. Colombia also won a concession on the investor-state dispute settlement process that arbitration must conform to Colombian law and take place in Colombia. In the CTPA, arbitration does not have to follow Colombian law and the arbitration can take place outside of Colombia.

Advantage Canada

¶7. (U) Canada primarily exports to Colombia cereals, paper (newsprint), off-road dump trucks, copper wire, machinery and electrical equipment. The Colombian tariff on those products varies, and in many instances the GOC waives the tariff to increase importation of intermediate goods or when world prices are high, as is currently the case with cereals. The Colombia-Canada agreement will immediately eliminate nearly all tariffs on industrial products, including machinery, textiles and apparel, giving Canadian producers a clear advantage over U.S. producers in various sectors. For instance, motor graders (heavy earth leveling equipment) produced in Canada would face no tariff while a similar product made by Caterpillar in Illinois would face a duty of up to 20 percent. According to Mars' General Manager in Colombia, if the Canadian agreement comes into force and the CTPA does not, Mars may shift exports to Colombia to its facilities in Canada rather than from the current suppliers in Hackenstown, New Jersey (candy) and Columbus, Ohio (pet food).

¶8. (U) Canada exported $17 million in commercial services in 2004, mainly in mining, oil and gas, engineering, architecture and information technology. Under the Agreement, Canadian companies in those and other sectors will enjoy greater market access than their U.S. competitors. The Government Procurement chapter provides more opportunities for Canadian firms than U.S. suppliers. In addition, Canadian investors will gain greater coverage than equivalent U.S. investors.

¶9. (U) Although the GOC is not currently imposing tariffs on most of Canada's agricultural exports because of high world prices, the Agreement will give Canadian producers a leg up on U.S. exporters when world food prices decline and Colombia reapplies its variable agricultural tariffs. For example, Canadian pork and beef producers will be able to export duty free to Colombia, whereas U.S. producers would face a 5 to 80

percent tariff on these products.

Road to Approval

¶10. (U) The Colombians expect to sign the Agreement at the end of July or beginning of August, following the requisite review process. Congressional and constitutional court approval will take at least six months, but the GOC hopes to have the Agreement operational by early 2009.

¶11. (SBU) Comment: Uribe's very active trade team is starting to show some concrete results. The Canada agreement locks in a key trade partner, and the GOC is hopeful that it will serve to put pressure on the U.S. to approve the CTPA. As one business leader told EconCouns, "apart from putting pressure on the Democrats" to approve the CTPA, the Canada deal actually represents a solid economic gain for Colombia as it increases Colombian duty free access from 72% to 92% of it products. This access will be particularly important for Colombian sugar, biofuels, flowers and textiles.
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